Appeal No: VA17/5/659

AN BINSE LUACHÁLA
VALUATION TRIBUNAL

NA hACHTANNA LUACHÁLA, 2001 - 2015
VALUATION ACTS, 2001 - 2015

Tullynamoyle Wind Farm Ltd **APPELLANT**

and

Commissioner Of Valuation **RESPONDENT**

In relation to the valuation of
Property No. 2212340, Utility at Local No/Map Ref: 8A Tullynamoyle Wind Farm, Tullynamoyle, Killarga, Manorhamilton, County Leitrim.

B E F O R E

Eoin McDermott – FSCSI, FRICS, ACI Arb	**Deputy Chairperson**
Michael Brennan – BL, MSCSI	**Member**
Fergus Keogh – MSCSI, MRICS	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 7th DAY OF JUNE, 2023

1. THE APPEAL

1.1 By Notice of Appeal received on 12th October 2017 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value '(the NAV') of the above relevant Property was fixed in the sum of €537,000.

1.2 The sole ground of appeal as set out in the Notice of Appeal is that the determination of the valuation of the Property is not a determination that accords with that required to be achieved by section 19 (5) of the Act because:

"*1. The Valuation of the subject property is excessive and inequitable. The sector remains subject to the Limerick Test Cases, namely VA15/5/038 and VA15/5/067 which remain undetermined by the Valuation Tribunal owing to legal issues.*

2. The remainder of the appellants grounds remain essentially the same as in VA15/5/038; namely the following issues arising in the Commissioner's methodology:

a) The Capacity factor. The valuation office are currently using a model that reflects a maximum capacity factor for the subject property. This does not take into account possible fluctuations in capacity based on poorer years for wind production. The hypothetical tenant would build in a buffer in order to make any rental bid and the capacity factor should be reduced by 5% to reflect this.

b) The 70:30 Landlord Tenant split in the divisible balance. Given that the sinking fund calculation involves estimating the value of the asset at the current time, rather than at a future projected time and that planning permissions for these projects elapse after 20 years at which point the tenant may be forced to extinguish the project if further permission is not granted, it is unlikely that the hypothetical tenant would be happy with only a 30% share of the profit derived. It is likely that in order to reach agreement, given the costs involved, a hypothetical tenant would require a 50:50 landlord tenant share, which is also in keeping with general practice.

c) The sinking fund calculation. At 1st Appeal, the Commissioner, for the first time, correctly identified wind farms as wasting assets, through application of a sinking fund allowance. Whilst the technical lifetime of a turbines is generally in the region of 20 years, the turbines are rendered technologically obsolescent in 12-15 years, due to advancements. The appellants believe that the formula should take account of this technological obsolescence as the hypothetical tenant would by highly likely to base his replacements on this fact, rather than the ultimate life of the turbines themselves.

d) The operating costs allowed by the Valuation Office would be insufficient for the hypothetical tenant. The manner in which the turbine is run by the actual tenant is not representative of a hypothetical tenant. In this instance, further analysis of comparable wind farm projects is required by the Valuation Office to ascertain the correct costings the hypothetical tenant would apply and disclose said to the appellants. The appellants believe that if these four conditions are met, a fair valuation on a receipts and expenditure valuation can be achieved.

3. However, it should be noted that even a 'fair' valuation on the basis of receipts and expenditure may not be in keeping with a fair value when weighed against other conventional power generation valuations and therefore what the hypothetical tenant might pay. The Commissioner currently appears to suggest that wind farms should pay ca. 400% more than

conventional generating stations, which are just as profitable if not more so. All suppliers feed into the Single Energy Market (SEM) and as such should be fairly weighed against each other in order to arrive at an appropriate value for the subject property. Indeed, any attempt to value parts of the market in isolation may represent a subsidy to parts of the power generation market which could make future projects unviable and also may be contrary to Article 13 of the Renewables Directive. This must be taken into account in the 'stand back and look' stage of the valuation. Indeed, the appellants estimate of value may need to be revised downwards subject to the discovery of documents relating to the Net Annual Values applied to conventional generating stations, as these levels represent the maximum fair value for the subject property.

4. The schematic applied to the wind farms should use an economy to scale model as smaller projects tend to have higher fixed costs than larger ones. Indeed, if the Commissioner's argument was taken to its extreme, major providers such as SSE and ESB would build small farms, being in the Commissioners opinion 'more profitable', but this is not the case in reality."

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €61,600.

2. REVALUATION HISTORY

2.1 On 19th January 2017 a copy of a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 ("the Act") in relation to the Property was sent to the Appellant indicating a valuation of €537,000.

2.2 A Final Valuation Certificate issued on 7th September 2017 stating a valuation of €537,000.

2.3 The date by reference to which the value of the property, the subject of this appeal, was determined is 30th October 2015.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held remotely, on 11th November 2021. At the hearing the Appellant was represented by Mr. David Halpin M.Sc. (Real Estate), Ba. (Mod) of Eamonn Halpin & Co. Ltd. The Respondent was represented by Mr. David Dodd BL instructed by the Chief State Solicitor's Office and Mr. Liam Hazel MSCSI, MRICS, MIPAV (CV), ACI Arb, MSc, BSc, Dip. Acc. & Fin. gave evidence on behalf of the Valuation Office.

3.2 In accordance with the Rules of the Tribunal, the parties had exchanged their respective reports and précis of evidence prior to the commencement of the hearing and submitted them to the Tribunal. At the oral hearing, each witness, having taken the oath, adopted his précis as his evidence-in-chief in addition to giving oral evidence.

4. ISSUES

4.1 The parties' valuers were agreed on a number of matters and consequently it was confirmed at the outset that in terms of valuation only three issues fell for determination by the Tribunal. The first issue was the method of assessing the output of the windfarm, the Appellant basing its figure on the 2016 output in MegaWatt hours (MWh) while the Respondent based its figure on the average output over the three-year period 2013 – 2015. The second issue was whether the figure for operating costs should be €20 per MWh as sought by the Appellant or €15 per MWh as put forward by the Respondent. The final issue concerned the period of the sinking fund. The Respondent contended for the 20-year period which represents the design life of the wind turbines while the Appellant argued for the shorter 15-year period being the duration of the Renewable Energy Feed-In Tariff (hereinafter "the REFIT") Scheme. It was noted at the hearing that the issue of the period of the sinking fund had been considered by the High Court in *Commissioner of Valuation v Hibernian Wind Power Ltd*[1] where it was decided that a 20-year period was the appropriate one to adopt and although under appeal, this represented the law as it stands.

4.2 A procedural issue arose at the hearing as to whether the Respondent can contend, on an appeal made by a ratepayer, for an increase in the valuation of a property as stated in the valuation certificate.

5. RELEVANT STATUTORY PROVISIONS:

5.1 The net annual value of the Property has to be determined in accordance with the provisions of section 48 (1) of the Act which provides as follows:

"The value of a relevant property shall be determined under this Act by estimating the net annual value of the property and the amount so estimated to be the net annual value of the property shall, accordingly, be its value."

[1] 2021 IEHC 49

Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the factors to be taken into account in calculating the net annual value:
"Subject to Section 50, for the purposes of this Act, "net annual value" means, in relation to a property, the rent for which, one year with another, the property might, in its actual state, be reasonably be expected to let from year to year, on the assumption that the probable average annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes in respect of the property, are borne by the tenant."

5.2 Section 19(5) (inserted by section 7(b) of the 2015 Act) of the 2001 Act provides:

(5) The valuation list as referred to in this section shall be drawn up and compiled by reference to relevant market data and other relevant data available on or before the date of issue of the valuation certificates concerned, and shall achieve both (insofar as is reasonably practicable) —

(a) correctness of value, and

(b) equity and uniformity of value between properties on that valuation list,

and so that (as regards the matters referred to in paragraph (b) the value of each property on that valuation list is relative to the value of other properties comparable to that property on that valuation list in the rating authority area concerned or, if no such comparable properties exist, is relative to the value of other properties on that valuation list in that rating authority area.

5.3 Section 37 of the 2001 Act as amended by section 18 of the 2015 Act deals with the consideration of appeals made to the Tribunal under section 34 (substituted by section 20 of the 2015 Act) of the 2001 Act. Where the issue in the appeal relates to the value of property, the Tribunal is required by section 37(1) to achieve a determination of the value of the property concerned that accords—

(a) with that required to be achieved by section 19(5), or

(b) in the case of an appeal from a valuation made under section 28, with that required to be achieved by section 49.

Section 37 (2), in material part, provides that having considered the appeal, the Tribunal may, as it thinks appropriate—

(a) disallow the appeal and, accordingly, confirm the decision of the Commissioner, valuation manager or revision manager, as appropriate, or

(b) allow the appeal and, accordingly, do whichever of the following is appropriate—

(i) ...

(ii) in accordance with the matters set out in section 19(5) or 49, as appropriate, increase or decrease the valuation as stated in the valuation certificate,

(iii) ...

by the tenant."

6. APPELLANT'S CASE

6.1 Mr. Halpin opened his case by briefly describing the property. He noted that the parties had agreed to adopt a revenue figure of €80.17 per MWh, representing the REFIT price plus 100% of the balancing payment. He explained that he had considered the wind farm output for the years 2013 - 2016 and was of the opinion that the hypothetical tenant, taking a conservative approach, would base his rental bid on the lowest output figure, which in this case was the 2016 output. In relation to costs, he took the accounts of the windfarm for the years 2013 – 2016 and, after allowing for certain deductions, arrived at an average cost of €19.86 per MWh, which he rounded to €20 per MWh. He noted and disagreed with the Respondents approach of disallowing certain items, namely the lease of offices, service charges, motor expenses, bank charges and charitable donations. He pointed out that even if the Tribunal disallowed these expenses, the hypothetical tenant would have regard to the ever-increasing costs of the service and maintenance agreement, which he said were due to double in 2017 and that the Tribunal should take account of this in its deliberations. Finally, in respect of the sinking fund, he saw no reason to stray from the previous decisions of the Tribunal to calculate it over 15 years but accepted that the High Court had ruled differently subsequent to the submission of his précis. He contended for a valuation of €375,000.

6.2 Under cross examination, Mr. Halpin agreed that the hypothetical tenant would not have been aware of the 2016 wind output at the Statutory Valuation date of 30th October 2015 but argued that the hypothetical parties were negotiating the figure at the Statutory effective date

which he said was 15th September 2017, at which stage the 2016 figures would have been known. He did accept that he was departing from the *The R&E Method of Valuation for Non-Domestic Rating – A Guidance Note of the Institute of Revenues Rating and Valuation' ("the Guidance Note")* on this point but pointed out that output figures do not, of themselves appear in company accounts.

6.3 In relation to costs, Mr. Halpin agreed that the Guidance Note provided for the deduction of working expenses from the gross receipts of the enterprise and that only those costs forming part of the venture undertaken as a result of the occupation of the property were allowable. He believed that the rent of office space was an allowable expense. He gave his understanding that the service charge figures were a management fee for the security and monitoring of the site and were a cost that the hypothetical tenant would have to bear. He argued that motor expenses were a legitimate cost and that it was not for the Respondent to decide if a car was needed for the operation of the business. He also stated that a car was purchased for the use of the business in 2013. He argued that bank charges formed a necessary part of the operation of any business, although he did agree that there was one exceptional item which should be excluded. He also noted that charitable donations were part of running costs of any windfarm (in the form of sponsorship of community projects) and should be allowed. Under cross examination, he did not accept that he was introducing a new ground of appeal by raising the increase in costs under the service and maintenance agreement, arguing that it was covered both under the general grounds of the appeal and by the inclusion of the service and maintenance agreement in his précis.

6.4 In response to a question on the service charges from the Tribunal and a separate item for the same amount in the accounts for "Service Charges to Directors", Mr. Halpin said that it was a related party who did the monitoring but argued that a hypothetical tenant would also have to carry these costs. He was unable to explain why the payment was necessary given that there was already a sum in the accounts for wages and salaries. He did say that the operator had told him that no other windfarm operator would do the job any cheaper than the amount suggested in the accounts.

7. RESPONDENT'S CASE

7.1 Mr. Hazel opened his evidence by amending some of the figures contained his précis, which needed to be updated following the issuance of a number of Tribunal decisions. In giving

evidence he confirmed that his average capacity factor and average output figure were based on the generation performance of the property over the 3-year period between I January 2013 and 31 December 2015 and noted that this was in accordance with the provisions of the Guidance Note. On the matter of operating costs, it was his view that there were five expenses in issue. He firstly stated that Mr. Halpin had confirmed in his evidence that the charitable donations were in fact community fund obligations and as such Mr. Hazel agreed that they should be allowed. He did not believe that the rent for office space was an allowable entity, noting that it arose in one year only. He confirmed his view that the service charges to directors were not allowable, noting that wages, and service and maintenance payments had been allowed. He stated his opinion that payments to Directors for services rendered should be dealt with in the Divisible Balance. On the issue of motor expenses, he said that these were generally allowable but not at the level seen in these accounts. He noted Mr. Halpin's evidence about the purchase of a car and pointed out that a significant figure was allowed for tenant's chattels. Mr. Hazel confirmed that his costs figure of €15 per MWh was derived from a consideration of the average costs of ten Limerick wind farms. On the issue of the cost of the subject service and maintenance contract, he said that Mr. Halpin's suggested costs figure of €20 per MWh appeared high when compared to other cases which had been before the Tribunal, such as *Declan Rouse Powercon Wind Energy v Commissioner of Valuation ("Powercon"), Brickmount T/A Dunneill v Commissioner of Valuation ("Brickmount"), VA17/5/108 West Clare Wind Farm v Commissioner of Valuation ("West Clare"), VA17/5/786 Lacken Wind Energy v Commissioner of Valuation ("Lacken")*. He requested that the valuation in the list be increased to €603,000.

7.2 Under cross examination, Mr Hazel accepted that the costs shown in the accounts for *Lacken* did not include wages and noted that the Tribunal had made an allowance for them, as outlined in his précis. He agreed that the Tribunal had previously adjusted the costs figure in the accounts in the *West Clare* case to allow for both wages and an increasing service and maintenance costs. He did not accept that the proposed increase in service and maintenance costs justified increasing the overall costs figure to €20 or €21 per MWh as sought by the Appellant, saying that the Respondent considered that costs at that level would represent overspending by the Appellant, when compared with the accounts provided for other windfarms.

7.3 On the issue of wind generation, Mr. Hazel confirmed that he had based his approach on the average wind generation for the three-year period 2013 – 2015. He agreed that the wind

generation figure for 2016 would have been known as at 1st January 2017 (before the Statutory effective date) but noted that the hypothetical tenant was making its rental bid as at 30th October 2015. He did not agree with Mr. Halpin's assertion that the bid was being made on the effective date with the benefit of knowledge of events subsequent to the valuation date, noting that the only issue that had relevance at the effective date was the physical property itself, and that all other evidence should be from at or before the valuation date save for certain issues where, for example, a trend could be confirmed. He did not consider it an issue that he had used accounts for the full year 2015 when the valuation date was 30th October, noting that the wind output figures were relatively consistent across the three years (acknowledging a slight drop in 2014).

7.4 Mr Halpin put it to him that at the valuation date on 30th October 2015, a full year's accounts was not available for assessment to which Mr Hazel replied that there was 10 months consistency in annual and monthly output. When it was put to him that his valuation was not equitable or uniform, Mr. Hazel stated that the property was to be valued in accordance with the provisions of S. 19 (5) of the Act with regard to equity and uniformity. He pointed out that the valuations had been completed prior to the Tribunal issuing any Wind Farm decisions and the amended valuation he had put forward reflected the decisions that had issued by the Tribunal between the publication date and the issuing of his précis. He accepted that this meant that some properties on the list that were not appealed were being valued on a different schematic to properties that were appealed.

7.5 In a response to a query from the Tribunal, Mr. Hazel confirmed that his figure of €15 per MWh for costs was passed purely on the Respondents analysis of Limerick windfarms and that the similarity to the actual cost figure allowed by the Respondent was coincidental.

8. SUBMISSIONS

8.1 On behalf of the Respondent, Mr. Dodd adopted his previous submissions relating to operating costs, the sinking fund and capacity factor to avoid repeating arguments with which the Tribunal is well familiar. His oral submissions may be briefly summarised:

a. The Tribunal had already decided the matter of Capacity Factor in the *West Clare* decision, where the Tribunal decided in paragraph 10.5 that the appropriate approach was to take the previous three-year accounts prior to the valuation date and not look at the accounts post the valuation date. He noted that this approach accords precisely with the Guidance Note. He also noted that an appeal in the *VA17/5/1008 Coillte Sliabh*

Bawn Wind Farm v Commissioner of Valuation ("Coillte") case had been recently heard by the High Court and that a decision was expected to issue within the next two months.

b. On the matter of operating costs, he noted that were divergent cost bases across the various wind farms and that the Respondent had taken the approach to try and "flatten the curve" so that everyone was treated relatively equitably and fairly.
c. The Tribunal must follow the judgement of the High Court in relation to the sinking fund, which deemed 20 years as being the appropriate period, as it had done in recent decisions.
d. The Tribunal had no jurisdiction to consider the increased costs arising from the service and maintenance contract as it was not a specific ground of appeal and nor was it specifically dealt with in the précis, it was only mentioned during the course of the hearing as a back-up argument.

8.2 Mr. Halpin raised a question as to whether the Tribunal had the power to allow an appeal and increase the valuation over that appearing in the list, as sought by the Respondent. He said that in order to consider changing the valuation, the Tribunal must look at the grounds of appeal, that the primary ground of appeal was that the valuation was excessive and inequitable and that therefore any decision to increase the valuation would not accord with the grounds of appeal. Mr. Dodd noted that this matter had been dealt with in *VA17/5/1073 Hibernian Windpower Ltd t/a Garvagh Glebe Wind Farm v Commissioner of Valuation ("Garvagh Glebe").* Mr. Halpin noted that this was also part of an appeal to the High Court and that the issue remained live and wished to put on record that the Appellants did not believe that the Tribunal had the power to increase the valuation.

9. FACTS

9.1 From the evidence adduced by the parties, the Tribunal finds the following facts.

9.2 The Property known as Tullynamoyle Wind Farm is located in Leitrim and comprises a wind turbine electricity generating facility situated in the townland of Kilagra.

9.3 Tullynamoyle wind farm has 4 Enercon turbines each having a generating capacity of 2.3 Megawatts (MW). The Total Installed Generation Capacity (TIGC) of the Property is 9.2MW and so the wind farm is a large-scale wind generator. It was commissioned in November 2011 and is supported by the REFIT 1 scheme.

9.4 The Property was re-valued as part of the revaluation of the Leitrim County Council rating authority area. The valuation date is 30th October 2015. A proposed valuation certificate was issued under section 24 of the Valuation Act 2001 (hereinafter "the Act") in relation to the Property to the Appellant indicating a proposed valuation of €537,000. Following representations to the valuation manager under section 29 of the 2001 Act, the valuation of the Property remained unchanged, and a final Valuation Certificate issued indicating a valuation of €537,000.

10. FINDINGS AND CONCLUSIONS

10.1 In the revaluation of a property, the estimation of the NAV of a relevant property is a statutory exercise to be conducted in accordance with section 48 of the 2001 Act as amended having regard to the requirements of section 19(5). On this appeal the Tribunal's task is to estimate the rent which the hypothetical tenant might reasonably be expected to give for the Property as of 30th October 2015 subject to the obligations mentioned in section 48 as a tenant from year to year in order to achieve the requirements of section 19(5). This exercise requires the making of assumptions, contrary to the true facts, that the Property was vacant and to let at the valuation date by a willing landlord, and that such a letting could be achieved. However, the Property is not hypothetical. It is taken as it actually exists (i.e., in its physical state) at the date when the valuation list is published.

10.2 Subsequent to the submission of précis by the parties, but before the hearing took place, a decision was issued from the High Court in an appeal by way of case stated in respect of the Tribunal's decision in *VA15/5/067 Hibernian Wind Power Ltd v Commissioner of Valuation ('Hibernian')*. The principal findings of the Judgment [2021] IEHC 49 are that:

> (a) the Tribunal was incorrect in law to calculate the sinking fund over a 15-year period when the life of the asset was 20 years; and
>
> (b) the Tribunal was correct in law in disregarding valuation evidence which was extrapolated from the financial accounts of ten windfarms in County Limerick to derive an average price per megawatt hour and an average operational cost per megawatt hour to arrive at an average NAV per megawatt of capacity for the windfarm in that case.

The judgement was subsequently upheld in the Court of Appeal [2023] IECA 121.

10.3 It is common case that no market rental evidence is available for wind farms and the parties agreed that the appropriate approach to estimating the NAV of the Property is to adopt the R & E method of valuation. There is agreement between the parties on certain component elements of the valuation such as the price per MWh that the wind farm operator will receive, interest on tenant's chattels and the divisible balance. The disputed issues concern the energy output, the calculation and quantum of the operational costs and the duration of the sinking fund.

10.4 The rationale of R & E method of valuation is that the hypothetical tenant would consider the income he could generate from the Property and the expenses he would incur in generating that income to form a judgment as to the proportion of the profits he would be willing to pay for rent. The figures adopted will be influenced by the available accounts that reflect the trading experience of the actual occupier. On this appeal accounts are available for the years ending 2012, 2013, 2014 2015 and 2016. The *Guidance Note* at paragraph 5.6 reads

"*The valuation is required to be carried out in relation to the relevant valuation date. The accounts available for the years preceding the valuation date should be carefully examined to ensure that they fairly reflect the proper trading position at the valuation date*."

The *Guidance Note* at paragraph 5.9 reads:

"The number of years for which the accounts need to be considered will largely depend upon the nature of the venture. For some properties with comparatively level trading results, a period of three years accounts prior to the valuation date should give sufficient information to establish a fair and reasonable indication of the trading position. For other properties where trading may be of a more cyclical nature, a longer period of available accounts may need to be considered. The effect of inflation must be borne in mind when considering accounts for years prior to the relevant valuation date."

The Tribunal considers that the Appellant's accounts for 2013, 2014 and 2015 provide a reliable basis upon which the hypothetical tenant would adjudge the income and majority of expenses of the Property. The accounts for 2015 go two months beyond the valuation date but an analysis of the accounts for those three years indicate that the revenues and expenses follow the same trend and so the view can be taken that the same factors were in existence in November and

December 2015 as at the valuation date. Accordingly, the Tribunal accepts the Respondents approach that the wind output should be assessed on the average figures for years 2013 to 2015.

10.5 The parties adopted different approaches in the assessment of costs in the accounts. Mr. Halpin for the Appellant took the average accounts for the four-year period 2013 – 2016 which he said gave an average rate per MWh of €19.86. Mr. Hazel on behalf of the Respondent followed the Commissioners standard approach of applying a flat rate of €15 per MWh, based on an analysis of accounts of wind farms in Limerick. Mr. Hazel also queried a number of individual items in the accounts as assessed by Mr. Halpin and suggested that a correct interpretation of the accounts would indicate that the average figure over the three-year period 2013-2015 would be €14.94 per MWh.

10.6 The Tribunal has considered the accounts as submitted and reviewed the items excluded by Mr. Hazel. It has reinstated the figures for community services and a nominal figure for bank charges. A small allowance has been made for motor expenses and the figure for legal and professional fees has also been reduced. The Tribunal has made no allowance for Directors fees. The amended figures (shown at Appendix 2 – n/a to public) suggest an average allowable costs figure of €15.09 per MWh for the three-year period 2013 – 2015.

10.7 Mr. Halpin also raised the issue of the contracted increased charges in the service and maintenance agreement and his suggestion that these should be considered by the Tribunal was strongly opposed by the Respondent on the grounds that they had not been specifically raised as grounds of appeal or highlighted in the précis. Whilst the notice of appeal does not make explicit reference to the contracted increased charges, they are a factor that are inherently considered in the assessment of fairness of the R & E method of valuation and whether it is excessive or inequitable. It was Mr Halpin's oral evidence that they should be considered by the Tribunal and the original service and maintenance contract, and the subsequent revision were included in the appendices to his précis. The Tribunal has considered this issue before in the *West Clare* case, where it decided that the hypothetical tenant would take account of these increased charges. They represent a known and quantifiable increase in costs as at the valuation date. The Tribunal also notes its duty under S. 19 (5) to ensure that its valuations are correct and therefore finds that the increased charges in the service and maintenance agreement should be considered.

10.8 The maintenance contract is for a period of 15 years from 16th August 2011. It was executed at the end of 2010 and amended in 2014. The amendment, which took effect from

16th August 2014 (the start of the fourth operational year) resulted in the base price charge increasing from €6 per MWh to €6.70 per MWh for operational years 4 and 5 (to 15th August 2016). As per the amendment, the charge for the remaining 10-year period would rise to €12.60 per MWh (up from €12 per MWh in the original agreement) commencing from 16th August 2016. It should be noted that the payment terms under the agreement also changed from annually in advance to monthly in advance. The maintenance costs over the three-year period 2013-2015 were: €146,736 in 2013, €163,994 in 2014 and €159,774 in 2015 giving an average of €156,835 over that three-year period. These average maintenance and service costs are included in the €15.09 per MWh operating costs figure derived from the Appellant's accounts in 10.6 above, representing €6.68 of the costs. The hypothetical tenant will be aware that his likely service and maintenance costs will be calculated at a figure of approximately €6.68 per MWh for the period 30th October 2015 to 15th August 2016 and €12.60 per MWh thereafter. The hypothetical tenant is taking the property on a year-to-year basis, with a reasonable expectation of continuance. There is a significant price differential occurring in the existing service and maintenance agreement which takes effect approximately 8 months after the commencement of the hypothetical lease. While the Tribunal cannot have regard to the terms of private agreements, it believes that the hypothetical tenant at the valuation date would have regard to this amount of €12.60 per MWh as being the appropriate cost of service and maintenance when assessing a rental bid.

10.9 The Appellant submitted that the Tribunal does not have power to increase the valuation as stated in the valuation certificate on an appeal taken by the ratepayer on the grounds that the valuation is excessive. The Tribunal does not accept this submission. Under Section 20 of the Valuation (Amendment) Act 2015 the Tribunal is required to achieve a determination of the value of the property, the subject of the appeal, that accords with that required to be achieved by section 19(5) [inserted by section 7(b) of the 2015 Act]. Section 19(5) provides that the Tribunal's decision must achieve (i) correctness of value, and (ii) equity and uniformity of value between properties on that valuation list and section 37(2)(ii) provides that in accordance with the matters set out in section 19(5), the Tribunal may increase or decrease a valuation as stated in the valuation certificate.

10.10 The Tribunal's valuation is set out on the attached Appendix (N/A to public) and incorporates the conclusions reached on the issues raised by this appeal.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal allows the appeal and decreases the valuation of the Property as stated in the valuation certificate to €522,000.